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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket No. 0912311453-4308-03]

RIN 0694-AE81

Revisions to Defense Priorities and Allocations System Regulations

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule clarifies existing standards and procedures by which the Bureau of Industry and Security (BIS) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. It also sets new standards and procedures for such prioritization with respect to contracts or orders for emergency preparedness activities. Finally, this rule sets new standards and procedures by which BIS may allocate materials, services and facilities to promote the national defense. This rule implements provisions in the Defense Production Act Reauthorization of 2009 (September 30, 2009) (herein the Reauthorization Act) regarding publication of regulations providing standards and procedures

for prioritization of contracts and orders and for allocation of materials, services, and facilities to promote the national defense under emergency and non-emergency conditions.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Liam McMenamin, Defense Programs Division, Office of Strategic Industries and Economic Security at (202) 482-2233, liam.mcmenamin@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

This rule updates and expands the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700). BIS relies upon and uses the DPAS regulations to implement priority and allocation actions involving industrial resources. The DPAS has two principal components—priorities and allocations. Under the priorities component, contracts needed to support programs that have been approved for priorities support are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Such contracts may be between the government and private parties or between private parties. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term “national defense” means programs for military and energy production or construction, homeland security, stockpiling, space, emergency preparedness, and critical infrastructure protection and restoration. The term also includes foreign military and critical infrastructure assistance.

The Reauthorization Act (123 Stat. 2006) (Pub. L. 111-67) required agencies with priorities and allocations authorities to issue rules establishing standards and procedures by which those authorities will be used to promote the national defense, under both emergency and non-emergency conditions. Pursuant to the Reauthorization Act, BIS issued two proposed rules to amend its DPAS regulations. The first such proposed rule was published on June 7, 2010 (75 FR 32122) (herein the first proposed rule). BIS received one comment in response to that rule. Based on that comment and on its internal deliberations, BIS concluded that sufficient changes would be needed from its proposal to require a second proposed rule. Accordingly, BIS published a second proposed rule on January 31, 2014 (79 FR 5332) (herein the second proposed rule). The principal differences between the first proposed rule and the second proposed rule are summarized in the latter at 79 FR 5332 and not repeated here. BIS received no comments on the second proposed rule. Therefore, BIS is publishing the text that it proposed in the second proposed rule, without substantive change, as this final rule.

The Reauthorization Act requires each Federal agency that is delegated priorities and allocations authority consistent with section 101 of the Defense Production Act (50 U.S.C. app. 2071, *et seq.*) to issue final rules establishing standards and procedures by which that authority is used to promote the national defense, during both emergency and non-emergency conditions. In the Reauthorization Act, Congress further directed that, to the extent practicable, the Federal agencies with priorities and allocations authority should work together to develop a consistent and unified Federal priorities and allocations system. In order to meet this mandate, BIS worked in conjunction with the Departments of Agriculture (USDA), Defense (DoD), Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), and Transportation (DOT) to develop common provisions based on the DPAS that can be used by each Department in its own

regulation. The regulations promulgated, or to be promulgated, by each Department with delegated DPA Title I authority comprise the Federal priorities and allocations system.

Summary of changes to the DPAS made by this rule.

The following lists provide highlights of the changes to the DPAS implemented by this rule. A more detailed explanation of the changes and reasons therefor appears in the preamble to the second proposed rule. Because this final rule adopts the changes to the DPAS that were in the second proposed rule for the reasons set forth in the preamble to that rule without substantive change, BIS is not repeating them in full here. Interested persons may read them at 79 FR 5332, 5332 – 5341, January 31, 2014.

Highlights of changes related to priorities.

- The scope of reasons for which rated orders may be issued has been expanded to include homeland security, emergency preparedness, and critical infrastructure protection and restoration activities.
- The definitions section has been expanded to include definitions of terms related to allocations and terms related to emergency preparedness activities.
- Most rated orders will continue to require acceptance or rejection within 10 or 15 days depending on the type of rating; however, rated orders for emergency preparedness requirements may require acceptance or rejection within a shorter timeframe but no less than six hours for emergencies that have occurred, or 12 hours if needed to prepare for an imminent hazard.

- Procedures for persons to obtain priority ratings for items supporting homeland security, emergency preparedness, critical infrastructure protection and restoration, and information about how persons in the United States may seek such assistance have been added.
- Procedures for persons in Canada to obtain priority ratings for items in the United States and information about how persons in the United States may seek assistance in obtaining defense items in Canada have been updated and moved into a separate section.
- Procedures for persons in foreign nations other than Canada to obtain priority ratings for items in the United States and information about how persons in the United States may seek assistance in obtaining defense items from Australia, Finland, Italy, the Netherlands, Sweden and the United Kingdom have been updated and moved into a separate section. This section has been expanded to provide procedures for international organizations to obtain priority ratings.
- The table in Schedule I to part 700 has been updated to list all programs currently approved for priorities support and the delegate agency for each program.

Highlights of changes related to allocations.

- The rule provides that allocations will be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority, or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities, and precludes use of allocations to ration materials or services at the retail level.

- No allocation action may be used to control the general distribution of a material in the civilian market unless the Department of Commerce makes, and the President approves, a finding that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.
- The rule specifies the minimum information that must be included in an allocation order and provides for issuing the order directly to affected persons or through publication of a constructive notice in the *Federal Register*. All allocation orders must explain the relationship between the allocation order and any previously or subsequently issued rated or unrated orders and the start and end dates of the order.
- Allocation orders must be accepted and complied with. A person who is subject to an allocation order who believes that compliance is not possible must notify the Office of Strategic Industries and Economic Security. An allocation must be complied with to the extent possible until the Department of Commerce notifies the person that the order has been changed or cancelled.

Regulatory Requirements.

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” under

Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation contains two collections previously approved by OMB. OMB control number 0694–0053 authorizes the requirement that recipients of rated orders notify the party placing the order whether or not they will fulfill the rated order. BIS believes that this rule will not materially change the burden imposed by this collection. OMB control number 0694–0057 authorizes the collection of information that parties must send to BIS when seeking special priorities assistance or priority rating authority. BIS believes that this rule will not materially change the burden imposed by this collection. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at jseehra@omb.eop.gov or by fax to (202) 395–7285 and to Liam McMenamin, liam.mcmenamin@bis.doc.gov.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment

rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. No other law requires such an analysis. Consequently, no regulatory flexibility analysis is required and none has been prepared. The factual support for this certification is provided below.

Number of Small Entities

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Effective January 22, 2014), has a maximum annual revenue of \$35.5 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule sets criteria under which BIS (or agencies to which BIS delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which BIS would issue orders allocating resources or production facilities. This rule would affect

organizations that enter into contracts to supply materials, services and facilities that are necessary for the national defense (broadly defined to include “Programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity”). BIS’s experience in administering its priorities authority indicates that for-profit businesses are the organizations that provide such materials, services and facilities. If it becomes necessary to exercise allocations authority, the same types of materials, services and facilities and the same types of providers are the ones likely to be affected. Therefore, BIS believes that two of the categories of small entities identified by the RFA, small organizations and small government jurisdictions, are unlikely to experience any economic impact as a result of this rule. However, BIS has no basis on which to estimate the number of small businesses that are likely to be affected by this rule.

Impact

BIS believes that any impact that this rule might have on small businesses would be minor. The rule has two principal components: prioritization and allocation. Prioritization is the process that is, by far, more likely to be used. Under prioritization, BIS designates certain orders, which may be placed by Government or by private entities, and assigned under one of two possible priority levels. Once so designated, such orders are referred to as “rated orders.” The recipient of a rated order must give it priority over an unrated order. The recipient of a rated order with the higher priority rating must give that order priority over any rated orders with the lower priority rating and over unrated orders. A recipient of a rated order may place one or more orders at the same priority level with suppliers and subcontractors for supplies and services

necessary to fulfill the recipient's rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from liability for damages or penalties for actions or inactions made in compliance with the rule.

BIS expects that this rule will not result in any increase in the use of rated orders. The changes to the provisions of 15 CFR part 700 that apply to rated orders are primarily simplifications and clarifications. The standards under which a rated order would be issued are not changed by this rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not require a reduction in the total volume of orders nor would they require the recipient to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be offsetting, resulting in no net loss.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that BIS might take are set-asides, directives and allotments. A set-aside is an official action that requires a person to reserve resource capacity in anticipation of receipt of rated orders. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to stop or reduce production of an item, prohibit the use of selected items, or divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period. An allotment is an official action that specifies the

maximum quantity of a material, service or facility authorized for use in a specific program or application.

According to available records, BIS has not taken any actions under its existing allocations authority in decades and any future allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. app. 2071), hereinafter “DPA,” and by Section 201(e) of Executive Order 13603 of March 16, 2012, BIS may implement allocations to control the general distribution of a material in the civilian market only if the Department of Commerce made, and the President approved, a finding (1) that the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship. The term “national defense” is defined to mean “programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.”

Even a narrower use of allocations authority under this rule will be subject to the policy that this rule will set forth in 15 CFR 700.30 , providing that allocations will be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through use of priorities authority or when the use of priorities authority would

cause a severe and prolonged disruption in the supply of materials, services or facilities available to support normal U.S. economic activity.

Any allocation actions taken by BIS would also have to comply with Section 701(e) of the DPA (50 U.S.C. app. 2151(e)), which provides that “small business concerns shall be accorded, to the extent practicable, a fair share of the such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns.”

Conclusion

Although BIS cannot determine precisely the number of small entities that would be affected by this rule, BIS believes that the overall impact on such entities would not be significant. With respect to priorities authority, this rule is not likely to increase the number of priority rated contracts compared to the number being issued currently. Therefore the priorities authorities’ provisions of this rule are unlikely to have any economic impact. BIS’s lack of recent experience with allocations makes gauging the impact of an allocation, should one occur, difficult. However, because (1) all allocation actions require planning that includes evaluation of the impact on the civilian market, (2) allocations to control the general distribution of a material in the civilian market may be imposed only after a determination by the President, and (3) BIS has taken no allocation actions in decades, one can expect allocations will be a rare occurrence going forward. BIS believes that the expected unchanged level of contract prioritizations, planning and review requirements and requirements of section 701 of the DPA, which are

directed at protecting the interests of small businesses, provide reasonable assurance that any impact on small business will not be significant. For the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce certified that this action would not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, 15 CFR part 700 is amended as follows:

PART 700 – [AMENDED]

1. The authority citation for part 700 is revised to read as follows:

Authority: 50 U.S.C. App. 2061, *et seq.*; 42 U.S.C. 5195, *et seq.*; 50 U.S.C. App 468; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12656, 53 FR 226, 3 CFR, 1988, Comp. 585; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

2. Section 700.1 is revised to read as follows:

§ 700.1 Purpose of this part.

This part implements the Defense Priorities and Allocations System (DPAS) that is administered by the Department of Commerce, Bureau of Industry and Security. The DPAS implements the priorities and allocations authority of the Defense Production Act, including use of that authority to support emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders and for the allocation of materials, services, and facilities. The guidance and procedures in this part are generally consistent with the guidance and procedures provided in other regulations issued under Executive Order 13603 authority.

3. Section 700.2 is revised to read as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including military, emergency preparedness, homeland security, and critical infrastructure protection and restoration activities) are approved for priorities and allocations support. A complete list of currently approved programs is provided at Schedule I to this part.

(b) The Department of Commerce administers the DPAS and may exercise priorities and allocations authority to ensure the timely delivery of industrial items to meet approved program requirements.

(c) The Department of Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to certain government agencies that issue such contracts or orders. Such delegations include authority to authorize recipients of rated orders to place ratings on contracts or orders to contractors, subcontractors, and suppliers. Schedule I to this part includes a list of agencies to which the Department of Commerce has delegated authority.

4. In § 700.3, paragraphs (a), (b), and (e) are revised to read as follows:

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates.

Among rated orders, DX rated orders take precedence over DO rated orders. Program identification symbols indicate which approved program is attributed to the rated order.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

* * * * *

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this part.

§§ 700.4, 700.5, 700.6, and 700.7 [Removed and Reserved]

5. Sections 700.4, 700.5, 700.6, and 700.7 are removed and reserved.

6. Section 700.8 is revised to read as follows:

§ 700.8 Definitions.

The definitions in this section apply throughout this part:

Allocation. The control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation order. An official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment. An official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program. A program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act and Executive Order 13603, or the Selective Service Act and Executive Order 12742.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure. Any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act. The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*).

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

Directive. An official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness. All activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Emergency preparedness includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population);

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications); and

(3) Measures to be undertaken following a hazard (including activities for firefighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Hazard. An emergency or disaster resulting from:

- (1) A natural disaster, or
- (2) An accidental or man-caused event.

Homeland security. Includes efforts:

- (1) To prevent terrorist attacks within the United States;
- (2) To reduce the vulnerability of the United States to terrorism;
- (3) To minimize damage from a terrorist attack in the United States; and
- (4) To recover from a terrorist attack in the United States.

Industrial resources. All materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603. This term also includes the term “item” as defined and used in this part.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and/or operating supplies (MRO). (1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(3) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

National defense. Programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

Official action. An action taken by the Department of Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this part. Such actions include the issuance of rating authorizations, directives, letters of understanding,

demands for information, inspection authorizations, administrative subpoenas and allocation orders.

Person. Any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

Priorities authority. The authority of the Department of Commerce, pursuant to Section 101 of the Defense Production Act, to require priority performance of contracts and orders for industrial resource items for use in approved programs.

Priority rating. An identifying code assigned by a Delegate Agency or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Program identification symbols. Abbreviations used to indicate which approved program is supported by a rated order.

Rated order. A prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Selective Service Act. Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468).

Set-aside. An official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act. Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*).

Working day. Any day that the recipient of an order is open for business.

7. Section 700.10 is revised to read as follows:

§ 700.10 Authority.

(a) *Delegations to the Department of Commerce.* The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 13603 of March 16, 2012 (3 CFR, 2012 Comp., p. 225). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (3 CFR, 1991 Comp. 309).

(b) *Delegations by the Department of Commerce.* The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for industrial resources needed for use in approved programs.

(c) *Jurisdiction limitations.* (1) The priorities and allocations authority for certain items have been delegated under Executive Order 13603, other executive orders, or Interagency Memoranda

of Understanding between other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to those other items which include:

(i) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (delegated to the Department of Agriculture);

(ii) All forms of energy (delegated to the Department of Energy);

(iii) Health resources (delegated to the Department of Health and Human Services);

(iv) All forms of civil transportation (delegated to the Department of Transportation); and

(v) Water resources (delegated to the Department of Defense/U.S. Army Corps of Engineers).

(2) The priorities and allocations authority set forth in this part may not be applied to communications services subject to Executive Order 13618 of July 6, 2012 – Assignment of National Security and Emergency Preparedness Communications Functions (3 CFR, 2012 Comp., p. 273).

8. Section 700.11 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 700.11 Priority ratings.

* * * * *

(b) *Program identification symbols.* * * * The list of approved programs and their identification symbols is found in Schedule I to this part. * * *

* * * * *

9. Section 700.12 is revised to read as follows:

§ 700.12 Elements of a rated order.

(a) *Elements required for all rated orders.* (1) The appropriate priority rating and program identification symbol (e.g., DO-A1, DX-A4, DO-N1).

(2) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. When a “requirements contract,” “basic ordering agreement,” “prime vendor contract,” or similar procurement document bearing a priority rating contains no specific delivery date or dates, but provides for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as “calls,” “requisitions,” and “delivery orders,” the purchase orders supporting such contracts or agreements must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed.

(4) A statement that reads in substance: “This is a rated order certified for national defense use and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).”

(b) *Additional element required for certain emergency preparedness rated orders.* If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements, the following statement must be included in the order: “This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within [Insert a time limit no less than the minimum applicable time limit specified in §700.13(d)(2)].”

10. Section 700.13 is amended by revising paragraph (d) to read as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(d) *Customer notification requirements.* (1) Except as provided in paragraph (d)(2) of this section, a person must accept or reject a rated order in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the order includes the statement set forth in § 700.12(b), a person must accept or reject the rated order and transmit the acceptance or rejection in writing or in an electronic format within the time specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are six (6) hours after receipt of the order if the order is issued by an authorized person in response to a

hazard that has occurred, or twelve (12) hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

(3) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within one working day of the verbal notice.

11. Section 700.14 is amended by adding a sentence at the end of the examples paragraph in paragraph (b) and by revising paragraph (c)(2) to read as follows:

§ 700.14 Preferential scheduling.

* * * * *

(b) * * *

Examples: * * * However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.

(c) * * *

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in subpart H of this part. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in

subpart H of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(3).

* * * * *

12. Section 700.15 is amended by revising the second sentence of paragraph (a), the example following paragraph (a), the second sentence of paragraph (b), and by adding paragraph (c) to read as follows:

§ 700.15 Extension of priority ratings.

(a) * * * The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by the Department of Commerce.

Example: If a person is in receipt of a DO–A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO–A3 rated order to obtain the needed semiconductors.

(b) * * * Therefore, the inclusion of the rating will continue from contractor to subcontractor to supplier throughout the entire supply chain.

(c) A person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness rated order. That person must require acceptance or rejection, and transmission of that acceptance or rejection by the supplier within the time limit stated in the rated order that is being filled.

13. Section 700.16 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 700.16 Changes or cancellations of priority ratings and rated orders.

* * * * *

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) A person must cancel any rated orders that the person (or a predecessor in interest) has placed with suppliers or cancel the priority ratings on those orders if the person no longer needs the items in those orders to fill a rated order.

(f) A person adding a rating to an unrated order, or changing or cancelling a priority rating must promptly notify all suppliers to whom the order was sent of the addition, change or cancellation.

14. Section 700.17 is amended by revising paragraphs (d)(1)(ii) and (f) to read as follows:

§ 700.17 Use of rated orders.

* * * * *

(d) * * *

(1) * * *

(ii) The elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(a)(4) modified to read in substance: “This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700) as it pertains to the rated quantities.”

* * * * *

(f) A person is not required to place a priority rating on an order for less than \$75,000, or one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see FAR section 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

15. Section 700.18 is revised to read as follows:

§ 700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a rated order pursuant to this part unless the person is in receipt of a rated order, has been explicitly authorized to do so by the Department of Commerce or a Delegate Agency or is otherwise permitted to do so by this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity;

(iii) Items in advance of the receipt of a rated order, except as specifically authorized by the Department of Commerce (see § 700.41(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or the Department of Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 700.41).

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(3) Separate rated orders may not be placed solely for obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order.

(b) *Specific item limitations.* Notwithstanding any authorization or requirement to place a rated order stated elsewhere in this part, no person may place a rated order to obtain the following items unless such order is authorized by an official action of the Department of Commerce.

(1) Copper raw materials.

(2) Crushed stone.

(3) Gravel.

(4) Sand.

(5) Scrap.

(6) Slag.

(7) Steam heat, central.

(8) Waste paper.

16. Section 700.21 is revised to read as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) If the Department of Energy notifies the Department of Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, the Department of Commerce will determine whether the items in question are scarce, and, if they are scarce, whether there is a need to use the priorities authority.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a time frame consistent with the timely completion of the energy project. In determining scarcity, the Department of Commerce may consider factors such as the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities authority, the Department of Commerce may consider alternative supply solutions and other measures.

(c) After the Department of Commerce has conducted its analysis, it will advise the Department of Energy whether the two findings have been satisfied. If the findings are satisfied, the Department of Commerce will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(d) Schedule I to this part includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

17. The heading of subpart F is revised to read as follows:

Subpart F – Allocation Actions

18. Section 700.30 is revised to read as follows:

§ 700.30 Policy.

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

19. Section 700.31 is revised to read as follows:

§ 700.31 General procedures.

Before the Department of Commerce uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

- (d) A list of the materials, services, or facilities to be allocated;
- (e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;
- (f) A detailed description of the provisions that will be included in the allocations orders, including the type(s) of allocations orders, the percentages or quantity of capacity or output to be allocated for each purpose, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation action (*e.g.*, anticipated start and end dates);
- (g) An evaluation of the impact of the proposed allocation action on the civilian market; and
- (h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

20. In subpart F, add §§ 700.32, 700.33, 700.34, 700.35, and 700.36 to read as follows:

§ 700.32 Controlling the general distribution of a material in the civilian market.

No allocation action by the Department of Commerce may be used to control the general distribution of a material in the civilian market unless the conditions of paragraphs (a), (b), and (c) of this section are met.

(a) The Secretary has made a written finding that:

- (1) Such material is a scarce and critical material essential to the national defense, and
- (2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(b) The Secretary has submitted the finding for the President’s approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism.

(c) The President has approved the finding.

(d) In this section, the term, “Secretary” means the Secretary of Commerce or his or her designee.

§ 700.33 Types of allocations orders.

There are three types of allocations orders available for communicating allocation actions.

(a) *Set-aside*. A set-aside is an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive*. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a person to: stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

(c) *Allotment*. An allotment is an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

§ 700.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice to the parties through publication in the *Federal Register*. This section describes the elements that each order must include.

(a) *Elements to be included in all allocation orders.* (1) A detailed description of the required allocation action(s), including its relationship to previously or subsequently received DX rated orders, DO rated orders and unrated orders.

(2) Specific start and end calendar dates for each required allocation action.

(b) *Elements to be included in orders issued directly to affected persons.* (1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).”

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an authorized official or employee of the Department of Commerce.

(c) *Elements to be included in an allocation order that gives constructive notice through publication in the Federal Register.* (1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Defense Priorities and Allocations System regulations (15 CFR part 700).”

(2) The order must be signed by an authorized official or employee of the Department of Commerce.

§ 700.35 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Office of Strategic Industries and Economic Security immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within one working day. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Commerce that the order has been changed or cancelled.

§ 700.36 Changes or cancellations of allocation orders.

An allocation order may be changed or cancelled by an official action from the Department of Commerce. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the *Federal Register*.

21. Section 700.50 is amended by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 700.50 General provisions.

(a) Once a priority rating has been authorized pursuant to this part, further action by the Department of Commerce generally is not needed. * * *

(b) Special priorities assistance can be provided for any reason consistent with this part, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not otherwise ratable under this part. If the Department of Commerce is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Commerce may forward the request to another agency, identified in § 700.10(c), as appropriate, for action.

* * * * *

§700.51 – [Amended]

22. Section 700.51 is amended by:

- a. Removing the word “regulation” and adding in its place the word “part” in paragraph (a), introductory text;
- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” in the first sentence of paragraph (c)(1);
- c. Adding the phrase “the Department of” immediately preceding the word “Commerce” in paragraph (c)(3), introductory text;

- d. Adding the word “and” at the end of paragraph (c)(3)(iv);
- e. Removing paragraph (c)(3)(v); and
- f. Redesignating paragraph (c)(3)(vi) as paragraph (c)(3)(v).

§ 700.53 – [Amended]

23. Section 700.53 is amended by adding the words “the Department of” between the word “or” and the word “Commerce” in the introductory text.

§ 700.54 – [Amended]

24. Section 700.54 is amended by adding the words “the Department of” between the word “and” and the word “Commerce” in the introductory text.

25. Section 700.55 is revised to read as follows:

§ 700.55 Homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States.

Any person requesting priority rating authority or requiring assistance in obtaining rated items supporting homeland security, emergency preparedness, and critical infrastructure protection and restoration related activities should submit a request for such assistance or priority rating authority to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Washington, DC 20472; telephone: (202) 646-3520; Fax: (202) 646-4060; Email: fema-dpas@dhs.gov, Web site: <http://www.fema.gov/defense-production-act-program-division>.

26. In subpart H, §§ 700.56, 700.57, and 700.58 are added to read as follows:

§ 700.56 Military assistance programs with Canada.

(a) To promote military assistance to Canada, this section provides for authorizing priority ratings to persons in Canada to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada in support of approved programs.

(b) The joint United States-Canadian military arrangements for the defense of North America and the integrated nature of the United States and Canadian defense industries require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(c) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this part.

(d) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; Telephone: (819) 956-6825; Fax: (819) 956-7827, or electronically at DGAPrioritiesdedefense.ACQBDefencePriorities@tpsgc-pwgsc.gc.ca.

(e) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(f) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the Department of Commerce.

(g) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce on Form BIS-999. The Department of Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

§ 700.57 Military assistance programs with other nations and international organizations.

(a) *Scope.* To promote military assistance to foreign nations and international organizations (for example, the North Atlantic Treaty Organization or the United Nations), this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) *Foreign nations and international organizations.* (1) Any person in a foreign nation other than Canada, or any person in an international organization, requiring assistance in obtaining items in the United States or priority rating authority for items to be purchased in the United

States, should submit a request for such assistance or priority rating authority to: the Department of Defense DPAS Lead in the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, 3330 Defense Pentagon, Room 3B854, Washington, DC 20301; Telephone: (703) 697-0051; Fax: (703) 695-4885; Email: MIBP@osd.mil, Web site: <http://www.acq.osd.mil/mibp>.

(i) If the end product is being acquired by a U.S. Government agency, the request should be submitted to the Department of Defense DPAS Lead through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation or international organization, the request must be sponsored prior to its submission to the Department of Defense DPAS Lead by the government of the foreign nation or the international organization that will use the end product.

(2) If the Department of Defense endorses the request, it will be forwarded to the Department of Commerce for appropriate action.

(c) Requesting assistance in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom.

(1) The Department of Defense has entered into bilateral security of supply arrangements with Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom that allow the Department of Defense to request the priority delivery for Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Australia, Finland, Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Department of Defense DPAS Lead in the Office of the Deputy Assistant Secretary of Defense for Manufacturing and

Industrial Base Policy for assistance. Persons in Australia, Finland, Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with paragraph (b)(1) of this section.

§ 700.58 Critical infrastructure assistance programs to foreign nations and international organizations.

(a) *Scope.* To promote critical infrastructure assistance to foreign nations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations (for example the North Atlantic Treaty Organization or the United Nations) to obtain items in the United States in support of approved programs.

(b) *Foreign nations or international organizations.* Any person in a foreign nation or representing an international organization requiring assistance in obtaining items to be purchased in the United States for support of critical infrastructure protection and restoration should submit a request for such assistance or priority rating authority to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Washington, DC 20472; telephone: (202) 646-3520; Fax: (202) 646-4060; Email: fema-dpas@dhs.gov, Web site: <http://www.fema.gov/defense-production-act-program-division>.

27. Section 700.60 is revised to read as follows:

§ 700.60 General provisions.

(a) The Department of Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this part.

(b) Some of these official actions (rating authorizations and letters of understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 700.71(c). Directives are discussed in § 700.62.

28. Section 700.61 is amended by revising the heading and paragraph (a) introductory text to read as follows:

§ 700.61 Rating authorizations.

(a) A rating authorization is an official action granting specific priority rating authority that:

* * * * *

§ 700.62 – [Amended]

29. Section 700.62 is amended by removing “Directive” wherever it appears and by adding in its place “directive”.

§ 700.63 – [Amended]

30. Section 700.63 is amended by:

- a. Revising the section heading to read “Letters of understanding”;
- b. Removing “Letter of Understanding” wherever it appears and adding in its place “letter of understanding”;
- c. Adding the words “the Department of” immediately preceding the word “Commerce” in paragraph (a); and

d. Removing “Letters of Understanding” and adding in its place “letters of understanding” in paragraph (b).

§ 700.70 – [Amended]

31. Section 700.70 is amended by:

- a. Removing paragraph (b);
- b. Redesignating paragraph (c) as paragraph (b); and
- c. Removing the word “regulation” wherever it appears and adding in its place the word “part”.

32. Section 700.71 is revised to read as follows:

§700.71 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act and related statutes, and this part have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, the Department of Commerce may issue the following documents, which constitute official actions:

(1) *Administrative subpoenas.* An administrative subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, or this part. An administrative subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for information.* A demand for information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of the Department of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of the Department of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of the Department of Commerce as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the administrative subpoena, demand for information, or inspection authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a demand for information or inspection authorization shall be made personally, or by certified mail—return receipt requested at the person's last known address. Service of an administrative subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years of age at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or older may serve an administrative subpoena, demand for information, or inspection authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

33. Section 700.72 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of the Department of Commerce to have access to any premises or source of information necessary to the administration or enforcement of the Defense Production Act or this part, the Department of Commerce may seek compulsory process. * * *

* * * * *

34. Section 700.73 is revised to read as follows:

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, the Department of Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, or this part were not met.

(b) In cases where the Department of Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act and related statutes, or this part was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this part, or an official action.

35. Section 700.74 is revised to read as follows:

§700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes or this part is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act is a \$50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this part, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18 United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this part, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this section, delivery has not been made.

36. Section 700.80 is amended by revising paragraphs (a)(1) and (2), (b), and (c) to read as follows:

§700.80 Adjustments or exceptions.

(a) * * *

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this part or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the

request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security. The Office of Strategic Industries and Economic Security shall respond to requests for adjustment of or exceptions to compliance with the provisions of this part or an official action within 25 (twenty-five) days, not including Saturdays, Sundays or Government holidays, of the date of receipt.

* * * * *

37. Section 700.81 is amended by revising paragraphs (a), (b), and (g), to read as follows:

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.80, may appeal to the Assistant Secretary for Export Administration, Department of Commerce, who shall review and reconsider the denial. Such appeals should be submitted to the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Room 3886, Washington, DC 20230, Ref: DPAS Appeals.

(b) Appeals of denied requests for exceptions from or adjustments to compliance with the provisions of this part or an official action must be received by the Assistant Secretary for Export Administration no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

* * * * *

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Assistant Secretary for Export Administration.

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§ 700.90 – [Amended]

38. Section 700.90 is amended by removing the word “regulation” and adding in its place the word “part”.

§ 700.91 – [Amended]

39. Section 700.91 is amended by:

- a. Removing the word “regulation” wherever it appears and adding in its place the word “part”;
- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” wherever it appears; and
- c. Removing “705(e)” and adding in its place “705(d)” wherever it appears.

§ 700.92 – [Amended]

40. Section 700.92 is amended by:

- a. Removing the word “regulation” wherever it appears in the heading and in paragraphs (a), (b) and (c) and adding in its place the word “part”;

- b. Adding the phrase “the Department of” immediately preceding the word “Commerce” wherever it appears; and
- c. Removing the phrase “the regulations” and adding in its place “any provision of this part” in the first sentence of paragraph (d).

41. Section 700.93 is revised to read as follows:

§ 700.93 Communications.

General communications concerning this part, including how to obtain copies of this part and explanatory information, requests for guidance or clarification, may be addressed to the Office of Strategic Industries and Economic Security, Room 3876, Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone (202) 482-3634, e-mail DPAS@bis.doc.gov. Request for priorities assistance under § 700.50, adjustments or exceptions under § 700.80, or appeals under § 700.81, must be submitted in the manner specified in those sections.

42. Schedule I to part 700 is revised to read as follows:

Schedule I to Part 700—Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities support under this part by the Department of Defense¹, the Department of Energy or the Department of Homeland Security,

¹ Department of Defense includes: The Office of the Secretary of Defense, the Military Departments, the Joint Staff, the Combatant Commands, the Defense Agencies, the Defense Field Activities, all other organizational entities in the Department of Defense, and, for purposes of this part, the Central Intelligence Agency and the National Aeronautics and Space Administration as associated agencies.

in accordance with section 202 of Executive Order 13603. They have equal preferential status. The Department of Commerce has authorized the delegate agencies listed in the third column to use this part in support of those programs assigned to them, as indicated below.²

Program identification symbol	Approved program	Agency(ies)
Defense Programs		
A1	Aircraft	Department of Defense
A2	Missiles	Department of Defense
A3	Ships	Department of Defense
A4	Tank—Automotive	Department of Defense
A5	Weapons	Department of Defense

² The Department of Commerce is also listed as an agency in the third column for programs where its authorization is necessary to place rated orders.

Program identification symbol	Approved program	Agency(ies)
A6	Ammunition	Department of Defense
A7	Electronic and communications equipment	Department of Defense
B1	Military building supplies	Department of Defense
B8	Production equipment (for defense contractor's account)	Department of Defense
B9	Production equipment (Government owned)	Department of Defense
C1	Food resources (combat rations)	Department of Defense
C2	Department of Defense construction	Department of Defense
C3	Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities	Department of Defense
C9	Miscellaneous	Department of Defense

Program identification symbol	Approved program	Agency(ies)
Military Assistance to Canada		
D1	Canadian military programs	Department of Commerce
D2	Canadian production and construction	Department of Commerce
D3	Canadian atomic energy program	Department of Commerce
Military Assistance to Other Foreign Nations		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export	Department of Commerce
G2	Certain direct defense needs of foreign governments other than Canada	Department of Commerce
G3	Foreign nations (other than Canada) production and construction	Department of Commerce

Program identification symbol	Approved program	Agency(ies)
Critical Infrastructure Assistance to Foreign Nations		
G4	Foreign critical infrastructure programs	Department of Commerce
Co-Production		
J1	F-16 Co-Production Program	Departments of Commerce and Defense
Atomic Energy Programs		
E1	Construction	Department of Energy
E2	Operations—including maintenance, repair, and operating supplies (MRO)	Department of Energy
E3	Privately owned facilities	Department of Energy
Domestic Energy Programs		

Program identification symbol	Approved program	Agency(ies)
F1	Exploration, production, refining, and transportation	Department of Energy
F2	Conservation	Department of Energy
F3	Construction, repair, and maintenance	Department of Energy
Other Defense, Energy, and Related Programs		
H1	Certain combined orders (see section 700.17(c))	Department of Commerce
H5	Private domestic production	Department of Commerce
H6	Private domestic construction	Department of Commerce
H7	Maintenance, repair, and operating supplies (MRO)	Department of Commerce

Program identification symbol	Approved program	Agency(ies)
H8	Designated Programs	Department of Commerce
K1	Federal supply items	General Services Administration
Homeland Security Programs		
N1	Federal emergency preparedness, mitigation, response, and recovery	Department of Homeland Security
N2	State, local, tribal government emergency preparedness, mitigation, response, and recovery	Department of Homeland Security
N3	Intelligence and warning systems	Department of Homeland Security
N4	Border and transportation security	Department of Homeland Security

Program identification symbol	Approved program	Agency(ies)
N5	Domestic counter-terrorism, including law enforcement	Department of Homeland Security
N6	Chemical, biological, radiological, and nuclear countermeasures	Department of Homeland Security
N7	Critical infrastructure protection and restoration	Department of Homeland Security
N8	Miscellaneous	Department of Homeland Security

Dated: August 8, 2014.

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

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